

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

---

ELLIOT A. WRIGHT,

Plaintiff,

v.

1:23-cv-696  
(ECC/DJS)

MITSUBISHI HC CAPITAL AMERICA;  
CUMMINS INC.,

Defendants.

---

Elliot A. Wright, *Plaintiff*

Michelle Merola, Esq., *for Defendant Cummins Inc.*

Matthew F. Kye, Esq., *for Defendant Mitsubishi HC Capital America*

**Hon. Elizabeth C. Coombe, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Pro se Plaintiff Elliot A. Wright commenced this action against Defendants Cummins Inc. (Cummins) and Mitsubishi HC Capital America (Mitsubishi). Dkt. No. 1. Presently before the Court is Defendant Cummins's motion to dismiss the "Second Amended Complaint" pursuant to Rule 12(b)(6). Dkt. No. 43. For the following reasons, Defendant Cummins's motion to dismiss is denied.

**I. PROCEDURAL HISTORY**

On June 12, 2023, Plaintiff filed a Complaint against Defendant Cummins and Mitsubishi HC Capital America. Dkt. No. 1. Plaintiff also requested leave to proceed *in forma pauperis* (IFP). Dkt. No. 2. On July 11, 2023, United States Magistrate Judge Daniel J. Stewart granted Plaintiff's application to proceed IFP and ordered that the Complaint be accepted for filing pursuant to 28 U.S.C. § 1915. Dkt. No. 4. On September 22, 2023, Defendant Cummins filed a

motion to dismiss the Complaint. Dkt. No. 11. On October 6, 2023, Plaintiff filed a motion to amend the Complaint. Dkt. No. 14. Before the Court had an opportunity to address the pending motions, Plaintiff filed a second motion to amend the Complaint on November 22, 2023. Dkt. No. 21. On January 17, 2024, Defendant Mitsubishi filed an Answer with counterclaims. Dkt. No. 26.

On August 30, 2024, U.S. District Judge Anne M. Nardacci<sup>1</sup> construed Plaintiff's first motion to amend the Complaint as the filing of an Amended Complaint as of right, and therefore dismissed Defendant Cummin's motion to dismiss as moot. Dkt. No. 39. Judge Nardacci also denied Plaintiff's second motion for leave to amend the Complaint and instructed Plaintiff to file a proposed Second Amended Complaint, in proper form and limited to incorporating the additional claims and new defendant detailed in the second motion to amend the Complaint, within 14 days. *Id.* Judge Nardacci explained that after Plaintiff filed his proposed second amended complaint, Defendants could adjust their responses to the operative pleading. *Id.*

Plaintiff filed a "Third Amended Complaint" on September 16, 2024, but this pleading did not comply with Judge Nardacci's directions, it was not in proper form, and Plaintiff did not sign it. Dkt. No. 40.

On September 30, 2024, Defendant Cummins filed a motion to dismiss the "Second Amended Complaint," which is actually Plaintiff's proposed Third Amended Complaint. *See* Dkt. No. 43-2 at 4 (seeking dismissal of Dkt. No. 40). On October 22, 2024, Plaintiff filed another "Amended Complaint." Dkt. No. 46. This pleading is not in proper form, is not signed, and is mostly arguments responding to the pending motion to dismiss. *Id.*

---

<sup>1</sup> This case has since been reassigned to me from Judge Nardacci.

## **II. PLAINTIFF’S SECOND MOTION TO AMEND THE COMPLAINT**

The proposed amended complaints filed by Plaintiff, Dkt. Nos. 40, 46, do not correct the deficiencies noted by Judge Nardacci in her August 30, 2024 order, and they continue to fall short of the requirements for a proper pleading, even liberally construed. They do not assert the basic factual allegations that form the basis for his claims, instead largely making legal arguments in support of claims asserted in prior pleadings. They are not signed. In addition, Plaintiff may not incorporate his prior pleadings into any proposed amended complaint, which must be a complete and separate pleading. As a result of these deficiencies, Plaintiff has failed to submit a proposed amended complaint that complies with the local and federal rules, and his second motion to amend the complaint, Dkt. No. 21, is therefore denied. The Amended Complaint, Dkt. No. 14-1, remains the operative pleading.

## **III. DEFENDANT CUMMINS’S MOTION TO DISMISS**

As previously noted, Defendant Cummins’s pending motion to dismiss seeks dismissal of a proposed pleading filed by Plaintiff, which has not been accepted for filing by the Court and does not supersede the Amended Complaint, Dkt. No. 14-1, as the operative pleading. To the extent Defendant Cummins seeks dismissal of the proposed “Third Amendment Complaint,” Dkt. No. 40, the motion is therefore denied as moot.

## **IV. CONCLUSION**

The Clerk of the Court shall docket the Amended Complaint, Dkt. No. 14-1, as the operative pleading in this matter, and strike Plaintiff’s proposed amended complaints found at Dkt. Nos. 40 and Dkt. No. 46. It is clear that Plaintiff wishes to further amend the Amended Complaint, but minimal progress has been made in this case since it was filed almost two years ago. If the Defendants are now permitted to file an Answer or otherwise respond to the Amended Complaint,

Dkt. No. 14-1, it seems likely that any dispositive motion will be met with another motion to amend by Plaintiff.

This case is therefore referred back to the Magistrate Judge to resolve these case management issues, and to determine whether, and to what extent, Plaintiff should be permitted another opportunity to amend before the Defendants proceed with filing an Answer or otherwise responding to the Amended Complaint.

For these reasons, it is hereby

**ORDERED** that Defendant Cummins's motion to dismiss, Dkt. No. 43, is **DENIED**; and it is further

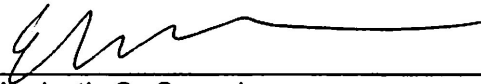
**ORDERED** that Plaintiff's second motion to amend the Complaint, Dkt. No. 21, is **DENIED**; and it is further

**ORDERED** that the Clerk of Court is respectfully directed to docket the Amended Complaint, Dkt. No. 14-1, as the operative pleading in this matter, and strike Plaintiff's proposed amended complaints at Dkt. Nos. 40 and Dkt. No. 46.; and it is further

**ORDERED** that this case is remanded to Magistrate Judge Daniel J. Stewart for further consideration and case management determinations.

**IT IS SO ORDERED.**

Dated: May 16, 2025

  
Elizabeth C. Coombe  
U.S. District Judge